

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CENTRAL SECTION

FILED
IN CLERK'S OFFICE
2004 MAY 28 A 11:46

U.S. DISTRICT COURT
DISTRICT OF MASS.

LOUIS ALBERGHINI,
Plaintiff,

V.

SIMONDS INDUSTRIES, INC.,
Defendant.

CIVIL ACTION NO.

04-40092-NMG

COMPLAINT

PARTIES

1. The plaintiff, Louis Alberghini, is currently sixty-three (63) years old, (DOB: August 30, 1940) and resides at 188 Lancaster Road, Berlin, Massachusetts 01503.
2. The defendant, Simonds Industries, Inc., is a corporation duly organized by law and has a usual place of business at Intervale Road, Fitchburg, Worcester County, Massachusetts 01420.
3. Defendant continuously employed the plaintiff from April 1982 until January 7, 2000 and again from February 2000 until May 31, 2001 at its Fitchburg, Massachusetts facility.
4. Defendant, at all times relevant to this complaint, engaged in an industry affecting commerce and had more than 20 employees, which makes the Defendant subject to the Age Discrimination in Employment Act (ADEA), as amended.

RECEIPT # 404333
AMOUNT \$ 150.00
SUMMONS ISSUED ✓
LOCAL RULE 4.1 ✓
WAIVER FORM ✓
MCF ISSUED ✓
BY DPTY. CLK. SQmes
DATE 5-28-04

JURISDICTION

5. Jurisdiction is conferred on this court by 29 U.S.C. § 623 and 28 U.S.C. § 1331 and supplemental jurisdiction is conferred on this court by 28 U.S.C. § 1367.

ALLEGATIONS

6. On January 7, 2000, the defendant terminated the plaintiff's employment. The plaintiff was the Manager of Manufacturing Services at the time of his termination. However, approximately 30 days later, the defendant re-hired the plaintiff with no loss of prior service as a project engineer until May 31, 2001 when the defendant terminated the plaintiff a second time. The plaintiff was 60 years old at that time.

7. The plaintiff has a Bachelor of Science degree in electrical engineering.

8. The plaintiff satisfactorily performed the project engineer position, and other positions, such as Facilities Manager, Electrical Maintenance Supervisor, Electrical Engineer, and Manager of Manufacturing Services, that he had previously performed for the defendant during the nineteen (19) years that plaintiff worked for defendant. The defendant had never disciplined the plaintiff during his employment.

9. The defendant hired Richard Brault (age 49) on August 14, 2000, Jeremy Dexter (age 24) on July 17, 2000 and Peter Duperry (age 24) on July 23, 2001. These employees, who are younger than the plaintiff, were retained by defendant or hired by defendant after the plaintiff was terminated, and assumed certain job duties and projects of the plaintiff after the plaintiff was terminated on May 31, 2001.

10. When the defendant terminated the plaintiff in January 2000, the defendant alleged that it was eliminating middle-managers at the Fitchburg facility in which the plaintiff was included as the Manufacturing Services Manager. However, all the middle-managers that were terminated were age protected employees. The defendant rehired one of those middle-managers, James Bourque, who was only 48 years old at the time, and continues to employ him. The plaintiff was rehired at the Fitchburg facility as a project engineer for a little over a year and then defendant terminated him again on May 31, 2001. No middle-manager 60 years of age or older was rehired by defendant after the January 7, 2000 reduction in force on a continuing basis.

11. Younger employees who were retained by defendant replaced the terminated middle-managers or performed or assumed the job duties of the terminated middle-managers albeit with different job titles.

12. At the time plaintiff was terminated the second time, the defendant provided no reason for the termination to the plaintiff. The defendant has since alleged that it reorganized the engineering department and that the second termination was due to financial crisis of the company. However, after plaintiff's termination in May 2001, the defendant continued to acquire other companies, continued to hire younger engineers and other managers at high salaries despite its alleged financial constraints.

13. The plaintiff was equally qualified to perform certain engineering positions that the defendant alleges it restructured and in which younger employees were retained or hired for those positions or performed or assumed those job duties.

14. The defendant did not treat age neutral in the reductions in force on either occasion and the defendant's alleged reasons for the plaintiff's termination on May 31, 2001 are mere pretexts for age discrimination.

15. The defendant provided the plaintiff a release of claims in connection with his termination on May 31, 2001. The release did not specifically waive state or federal age discrimination claims, nor was the purpose of the release to waive such claims. The defendant also did not provide the plaintiff with a list of employees, whose jobs were being eliminated, including the age, job titles and classifications of the affected employees. The defendant did not provide plaintiff 21 days to review the waiver and release of claims. In short, the waiver and release of claims violates most of the requirements of 29 C.F.R. § 1625.22 for a valid release of federal age discrimination claims.

16. On November 23, 2001, the plaintiff filed a timely charge of age discrimination against defendant at the Massachusetts Commission Against Discrimination (MCAD), Docket No. 012310657, which was cross-filed at the U.S. Equal Employment Opportunity Commission (EEOC), Charge No. 16C200200719.

17. On September 8, 2003, the plaintiff received a lack of probable cause disposition from the MCAD and the plaintiff timely appealed the MCAD disposition on or about September 17, 2003. The MCAD upheld its disposition on December 17, 2003.

18. The plaintiff received a Dismissal and Notification of Rights from MCAD on or about September 4, 2003 and Notice of Right to Sue from the EEOC on April 26, 2004.

**COUNT I – VIOLATION OF M.G.L. C. 151B
UNLAWFUL TERMINATION OF EMPLOYMENT**

19. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 18 above.

20. As a direct and proximate result of the defendant's intentional and unlawful acts of age discrimination in terminating his employment on May 31, 2001 in violation of M.G.L. c. 151B, plaintiff has suffered irreparable economic harm, losses, damages and emotional distress.

**COUNT II – VIOLATION OF ADEA
UNLAWFUL TERMINATION OF EMPLOYMENT**

21. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 20 above.

22. As a direct and proximate result of the defendant's willful, intentional and unlawful acts of age discrimination in terminating his employment on May 31, 2001 in violation of the ADEA, plaintiff has suffered irreparable economic harm, losses, damages and emotional distress.

COUNT III – VIOLATION OF OWBPA

23. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 22 above.

24. As a direct and proximate result of defendant's unlawful violation of the requirements of the OWBPA, as codified at 29 C.F.R. § 1625.22, for establishing a valid waiver and release of age discrimination claims, the plaintiff has suffered irreparable economic harm, losses and damages.

COUNT IV – CIVIL RIGHTS ACT OF 1991

25. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 24 above.

26. Defendant's conduct as alleged herein constituted intentional and unlawful age discrimination and, as a direct and proximate result, plaintiff has suffered future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses for which defendant is liable to plaintiff.

WHEREFORE, the plaintiff demands judgment against the defendant, and requests that he be awarded full back pay, front pay, reimbursement for lost benefits, compensatory damages, damages for mental anguish and emotional distress, multiple and punitive damages and costs of suit, reasonable attorney's fees and interest as allowed by law, and any other relief that the court deems appropriate, fair and just.

PLAINTIFF DEMANDS A TRIAL BY JURY WHERE APPLICABLE

Louis Alberghini,
The Plaintiff,
By his attorneys,



Marcia L. Elliott, Esq. (BBO# 564291)
John M. Flick, Esq. (BBO# 652169)
Elliott Law Office, P.C.
301 Central Street
Gardner, MA 01440
(978) 632-7948

Dated: May 26, 2004

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

04-40092

FILED

IN CLERK'S OFFICE

2005 MAY 28 A 11:46

1. Title of case (name of first party on each side only) ALBERGHINI V. SEMONDS INDUSTRIES, INC.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet: (See local rule 40.1(a)(1)).

☐

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

☒

II. 195, 388, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases

☐

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

☐

IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

☐

V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☐Central Division ☒Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐Central Division ☐Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Marcia L. Elliott, Elliott Law Office, P.CADDRESS 307 Central Street, Gardner, MA 01440TELEPHONE NO. (978) 632-7948

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

04-40092

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Louis P. Alberghini
188 Lancaster Road
Berlin, MA 01503

(b) County of Residence of First Listed Plaintiff Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Simonds Industries, Inc.
135 Intervale Road
Fitchburg, MA 01420
County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number) 978 632-7948

Marcia L. Elliott, Esq.
Elliott Law Office, P.C.
307 Central Street, Gardner, MA 01440

Attorneys (If Known) (508) 926-3434

Jonathan R. Sigel
Bowditch & Dewey, LLP
311 Main St., Worcester, MA 01608

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 DEF ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 DEF ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

29 USC Sec. 623 and OWBPA 29 C.F.R. Sec. 1625.22

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ unspecified CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

JUDGE
E

DOCKET NUMBER

DATE

5/28/04
FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____